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6 Attorneys for Defendant,
BMW OF NORTH AMERICA, LLC
7

8 UNITED STATES DISTRICT COURT
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10 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

11 NELSON AVELAR,

12 Plaintiff,

13 vs.

14 BMW OF NORTH AMERICA, LLC, a
15 Delaware Limited Liability Company,
16 FINCHEY CORPORATION OF
17 CALIFORNIA, a California Corporation
dba PACIFIC BMW, and DOES 1
through 10,

18 Defendants.
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Case No. 2:17-cv-04693 PJW

[Assigned to the Hon. Patrick J. Walsh]

**DEFENDANT BMW OF NORTH
AMERICA, LLC'S RULE 68
OFFER OF JUDGMENT**

Final Pretrial Conf.: November 4, 2019
Trial Date: November 18, 2019

TO NELSON AVELAR AND HIS ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Civil Procedure 68, Defendant BMW of North America, LLC (“BMW NA”) hereby offers to allow entry of judgment in favor of Plaintiff Nelson Avelar (“Plaintiff”) and against BMW NA as follows:

1. BMW NA will pay Plaintiff the sum of eighty three thousand seven hundred eighty-two dollars and twenty cents (\$83,782.20).
2. BMW NA will pay Plaintiff’s attorneys’ fees, expenses, and costs in an amount to be agreed upon, or, at Plaintiff’s election, in the amount to be determined by the Court to have been reasonably incurred pursuant to Civil Code section 1794(d). For purposes of any such motion, BMW NA will agree that Plaintiff is the prevailing party.
3. Plaintiff will file a Request for Dismissal of the entire action, with prejudice, within 5 business days after receiving all payments from BMW NA due to Plaintiff and Plaintiff’s counsel and those payments clearing the normal bank cycle.
4. In exchange for the aforementioned payments by BMW NA, Plaintiff shall transfer title, possession, and control of the 2011 BMW 328i, VIN WBAPH5G50BNM75401 that is the subject of this action to BMW NA.
5. The Court will retain jurisdiction to enforce this Offer of Judgment under FRCP 41(a).
6. Counsel for Plaintiff may accept this offer to compromise by signing and dating the below Notice of Acceptance and returning it to BMW NA’s counsel of record within fourteen (14) days after service. Pursuant to FRCP Rule 68, you are hereby notified that if this offer is not accepted prior within fourteen (14) days of the date hereof, it shall be withdrawn according to law. Pursuant to FRCP Rule 68, in the event this offer is not timely accepted, Defendant BMW of North America, LLC will request that it be awarded its costs incurred after this offer was made, and that Plaintiff be precluded from recovery of any costs, should Plaintiff fail to receive a more favorable judgment.

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1 This offer shall not constitute an admission of responsibility and is inadmissible as evidence
2 of liability.

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4 Dated: November 6, 2019

MORGAN, LEWIS & BOCKIUS LLP
Lisa Weddle
Karyn L. Ihara

6
7 By


Karyn L. Ihara

8 Attorneys for Defendant
9 BMW OF NORTH AMERICA LLC
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NOTICE OF ACCEPTANCE

**TO DEFENDANT BMW OF NORTH AMERICA, LLC AND ITS ATTORNEYS OF
RECORD:**

NOTICE IS HEREBY GIVEN that Plaintiff, Nelson Avelar, accepts Defendant's
foregoing Offer of Judgment made pursuant to Federal Rules of Civil Procedure Rule 68.

Dated: 11/6/19

Amy Rotman

Name of Party or Attorney for Party Accepting Offer



Signature of Party or Attorney for Party Accepting Offer